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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KENYATTA KALI WILLIAMS,

Defendant and Appellant.

A113799

(Solano County
Super. Ct. No. FCR224402)

Defendant Kenyatta Kali Williams was convicted by a jury of: driving with willful disregard for safety to evade a peace officer (Veh. Code, § 2800.2; count 1); assault on a peace officer with a deadly weapon (Pen. Code, § 245, subd. (c); count 2); hit and run driving (Veh. Code, § 20002, subd. (a); count 3); resisting arrest (Pen. Code, § 148, subd. (a)(1); count 4); and battery on a peace officer (Pen. Code, § 243, subd. (b); count 5). The court found that defendant had served two prior prison terms (Pen. Code, § 667.5, subd. (b)), and sentenced him to six years eight months in prison as follows: the midterm of four years on count 2, plus eight months (one-third the midterm) on count 1, plus one year for each of the prison priors. Defendant contends that the court violated Penal Code section 654 (hereafter § 654) by failing to stay imposition of the sentence on count 1.¹ However, substantial evidence supported the determination that counts 1 and 2

¹ Defendant also argues that section 654 precludes punishment on counts 3, 4, and 5, but that issue is moot as to those offenses because he was not sentenced for them.

were not part of an indivisible course of conduct having a single criminal purpose, and there is no merit to defendant's argument that pretrial rulings on venue and severance of charges compelled a contrary result. Accordingly, the judgment is affirmed.

I. BACKGROUND

Contra Costa County Deputy Sheriff David Novelli, BART Police Officer Hakeem Shabazz, Hercules Police Officer Allen Collard, and California Highway Patrol Officer Christopher Costigan were on duty on the night of May 25, 2005, working as part of a multi-agency vehicle theft prevention team. Novelli and his partner were in an SUV checking license plates in the parking lot of the Home Depot in El Cerrito at 9:07 p.m., when they noticed a white PT Cruiser with its headlights on parked in the lot. Novelli approached the car, which appeared to be unoccupied, and flashed a light inside. The driver, later identified as defendant, sat up, and Novelli knocked on the window and asked him why he was parked there. Defendant did not roll down the window and instead accelerated out of the parking lot.² Novelli and his partner pursued defendant, who turned south onto San Pablo Avenue, running another stop sign and a red light. They activated their police light and siren, and reported that they were following a suspect who had failed to yield. Shabazz, Collard, and Costigan appeared in separate vehicles, and Novelli's SUV dropped out of the chase.

Defendant continued south on San Pablo, running seven or eight red lights, until coming to a stop behind vehicles waiting at a red light at the intersection of San Pablo and University. The vehicles ahead of defendant occupied all three lanes of San Pablo; one was in the left hand turn lane, one in the middle lane, and one in the right lane. Officer Collard's vehicle pulled in to the front and left of defendant, Shabazz pulled up to his front right side, and Costigan pulled in behind him. Collard got out of his car, drew his gun, and shouted to defendant to put his hands up.

² Novelli said that defendant ran a stop sign as he was leaving the lot, but Steven Tam, a civil engineer for the City of Richmond who testified as defendant's sole witness, said there was no stop sign at that location.

Defendant abruptly accelerated and swerved to the left toward Collard, who was frightened and had to jump out of the way to avoid being run over. The PT Cruiser passed directly over where Collard had been standing, crashed into the open passenger door of Collard's car, and collided with Shabazz's vehicle. Costigan testified that defendant collided with Collard's and Shabazz's cars simultaneously. Collard testified that he heard a "second collision" after defendant struck the door of his vehicle, but "didn't see exactly what happened" with Shabazz's vehicle because he "was busy getting out of the way" at that point. Shabazz testified that after defendant hit Collard's car, defendant swerved to the right and hit his vehicle. Defendant then forced his way between the vehicles that were stopped in the left hand turn and middle lanes, colliding with them in the process, and continued south on San Pablo.

Costigan and Shabazz followed defendant, who, going through eight or more red lights, drove to Emeryville, turned east, and got on the I-80 freeway heading east. Defendant wove through traffic at speeds reaching over 90 miles per hour while being pursued by eight law enforcement vehicles and ignoring Costigan's demands, broadcast over his public address microphone, to pull over and surrender. Defendant eventually slowed down below the speed limit, but continued on I-80 into Solano County, running through the toll plaza at the Carquinez Bridge at 30 to 60 miles per hour without stopping.

Defendant led police, with a couple of off-freeway detours, up I-80 east to Dixon and back down I-80 west to Fairfield, where the chase ended at 11:50 p.m., about two hours and 40 minutes after it started. Defendant continued driving on the rims of his wheels after spike strips deployed by the highway patrol succeeded in flattening one, then three, and then all four of his tires, until the front suspension gave out and the vehicle ground to a stop on the freeway. Defendant got out of the car, walked or ran away from the officers, struggled when they caught up with him, and kicked California Highway Patrol Officer Christopher Parker in the chest and arm while being subdued.

II. DISCUSSION

Defendant contends that he could not be punished lawfully for both the assault and reckless evasion offenses because they were part of a continuous course of conduct with only one objective—eluding the police. Section 654, subdivision (a) provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one” “Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*Neal v. State of California* (1960) 55 Cal.2d 11, 19.) In deciding whether the defendant had multiple objectives, the trial court makes “a factual determination that must be sustained on appeal if supported by substantial evidence.” (*People v. Osband* (1996) 13 Cal.4th 622, 730.)

Here, the trial court rejected defendant’s argument for concurrent sentences and found that the offenses were “separate and distinct.” Substantial evidence supported the court’s implicit determination that defendant’s objective in assaulting Officer Collard was not simply to elude the police. While it is possible that defendant intended only to escape the situation at San Pablo and University when he started again, swerved and accelerated his car toward Collard, the evidence also supports a reasonable inference that he did so in order to injure Collard, and not merely to escape. (See, e.g., *People v. Brown* (2007) 148 Cal.App.4th 911, 916 [court found that assault with a deadly weapon was committed not to complete a robbery, but to hurt the victim].) The evidence does not establish that defendant’s only way out from among the cars around him was to steer his vehicle in Collard’s direction. In addition, the court could credit Shabazz’s testimony that defendant turned and slammed into Shabazz’s vehicle after hitting Collard’s—an act that might have reflected an assaultive animus and not simply a desire to flee. Where, as here, conflicting inferences can reasonably be drawn from the evidence, we cannot

substitute our judgment for that of the trial court. (*People v. Blum* (1973) 35 Cal.App.3d 515, 522.)

Defendant's other argument for a stay of count 1 is based on his unsuccessful "attempts to sever . . . charges from this Solano County prosecution" At the preliminary hearing, he raised a "jurisdictional" objection to count 2 (the assault count) on the ground that the alleged assault occurred in Alameda County, not Solano County.³ Judge Garrett rejected the argument, observing that the assault "was part of a continuing transaction that commenced in another county and went through multiple counties and concluded in Solano County." The venue argument was renewed at a later hearing, where defendant requested that the case be transferred to Alameda County because the "most significant" criminal conduct alleged was completed in that county. Judge Garrett denied the transfer request, finding that "this was a continuing course of conduct commencing in one county and expanding with another county with multiple crimes being committed" Defendant next moved to dismiss counts 2, 3, and 4 (Pen. Code, § 995) on the ground that the acts charged in those counts "solely happened in Alameda County." This motion was heard by Judge Ely, the judge who ultimately presided over the trial and sentenced defendant. He denied the motion, saying, "[I] agree with Judge Garrett. I think this was a single purpose. It was a whole lot of incidents regarding flight and evasion, and, therefore, I think that any one of the counties has jurisdiction to hear the matter"

Defendant argues that these venue and severance rulings conclusively established that he had only a single purpose in assaulting the officer and recklessly evading the police, and precluded a contrary finding under section 654 at sentencing. Venue rules and section 654, of course, serve entirely different purposes. (Compare *Simon*, *supra*, 25

³ The objection would have been properly directed to the venue, not the jurisdiction of the court. (See *People v. Posey* (2004) 32 Cal.4th 193, 207-208 [distinguishing between venue and jurisdiction]; *People v. Simon* (2001) 25 Cal.4th 1082, 1095-1097 [all courts in the state have subject matter jurisdiction over offenses committed in California].)

Cal.4th at p. 1095 [proper venue promotes efficient trials, protects defendants from prosecution in remote forums, and vindicates the interests of communities in which crimes occur] with *People v. Saffle* (1992) 4 Cal.App.4th 434, 438 [§ 654 ensures that punishment is commensurate with culpability].) Given those divergent purposes, venue and severance rulings are essentially irrelevant to sentencing, and defendant cites no case suggesting otherwise.

Moreover, defendant's argument rests on the faulty factual premise that multiple judges previously determined, for purposes of venue and severance, that the alleged crimes had a single objective, and that he was sentenced by a judge who impermissibly ignored earlier judicial rulings. Defendant observes that while "the court generally has the authority to correct its own prejudgment errors [¶] . . . [¶] . . . the power of one judge to vacate an order made by another judge is limited" (*In re Alberto* (2002) 102 Cal.App.4th 421, 426-427), and he submits on that authority that "[t]he sentencing judge was prohibited from making findings in conflict with those previously made by two judges sitting on this case." However, the sentencing judge, Judge Ely, was one of the judges who made the pretrial rulings, and he was the only one whose ruling referred to a unity of purpose underlying the crimes. Judge Ely said he "agree[d]" with Judge Garrett that defendant had only "a single purpose," but Judge Garrett referred only to a "continuing transaction" or "continuing course of conduct" without mentioning defendant's purpose. Thus, the same judge made the purportedly inconsistent rulings defendant identifies and, even under defendant's authorities, was free to change his mind when he revisited the issue for purposes of sentencing after receiving evidence at trial.

Defendant's argument might have greater force if, as he maintains, the venue and severance issues and the sentencing issue involved the same question of purpose, but they do not. Penal Code section 954 permits a defendant to be charged with "two or more different offenses connected together in their commission," and offenses properly joined can be tried together even if they were committed for separate purposes in different counties (e.g., *People v. Arias* (1996) 13 Cal.4th 92, 113-114, 118-119, 126-131 [severance was not required of charges of murder in Sacramento County and sex offenses

in Yolo County]). All of the crimes alleged here occurred during a continuous course of conduct in one time frame, and were thus plainly “connected together in their commission” within the meaning of Penal Code section 954. (See *People v. Mendoza* (2000) 24 Cal.4th 130, 160 [offenses committed within a close time frame were properly consolidated].) It would have made no sense to hold separate, duplicative trials of the assault and reckless evasion offenses, and there was no need to determine the purpose of defendant’s actions to ascertain venue.

III. DISPOSITION

The judgment is affirmed.

Marchiano, P.J.

We concur:

Stein, J.

Swager, J.